

In re Interest of Dana H.

Caselaw No.

No. A-15-246

Filed on

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SUMMARY: Dana H., appeals the order from the Lancaster Juvenile Court overruling his motion to suppress a switch-blade uncovered during a warrantless search of his backpack. The Court adjudicated him a child within the meaning of Neb. Rev. Stat. § 43-247(1) for having ?possession, custody, or control? of a switch-blade knife. The Court of Appeals affirms the decision of the Juvenile Court and finds the search to have been reasonable.

On September 24, 2014, Special Education Coordinator, Nancy Seim searched Dana?s backpack and found a switch-blade knife. The State filed a supplemental petition alleging that Dana was a child within the meaning of Neb. Rev. Stat. § 43-247(1) for violating Lincoln Municipal Code § 9.36.040. On October 31, 2014, Dana entered a denial and on November 14, 2014, filed a motion to suppress ?any and all items of evidence resulting from the seizure and warrantless search.?

A hearing on the motion was held on November 24, 2014. Seim was the only witness to testify and the only other evidence was a photo of the switch-blade knife. Seim testified that Dana had to sit outside Seim?s office at a desk on September 24, 2014 because the day prior, he slept through all of his classes. Teachers expressed concerns about Dana?s behavior that day, particularly expressions of anger and aggression. Seim testified that at the end of the day, she helped Dana organize his backpack and when she sat it down, she heard a ?clunk.?. She testified that she felt that was not a sound that a backpack should make and so she opened it up. Inside, she found three bottles of cologne. School policy only allows students to have one bottle of cologne and only in the locker room. Seim removed the bottles of cologne and underneath found the switch-blade knife at which point she called Dana?s mother and law enforcement.

The school sends out notice every year to parents that the school has the right to search a student?s locker or backpack if there is concern of wrongdoing.

The Juvenile Court overruled Dana?s motion and found that ?the search was reasonably related to the circumstances justifying the opening of the backpack, permissible in its scope, and reasonably related to the objectives of the search.?

The fact finding hearing was held on February 11, 2015. Dana again objected to the introduction of the evidence based on the Fourth Amendment that ?the search was not justified at its inception? and ?the search was not reasonably related in the scope [sic] to the circumstances that led to the search in the first place.? On February 18, 2015, the Court found Dana to be a juvenile within the meaning of Neb. Rev. Stat. § 43-247(1) for violating Lincoln Municipal Code § 9.36.040.

Dana assigns error to the Juvenile Court overruling his motion to suppress evidence obtained

from the warrantless search of his backpack, both that the search was not justified at its inception and that it was not permissible in scope and that it was in violation of the Fourth Amendment to the US Constitution and Article I, § 7 of the Nebraska Constitution.

The Court of Appeals reviews juvenile cases de novo on the record, but if there is conflicting evidence, it may give weight to the trial court's observation of witnesses. In *re Interest of Cassandra B. & Moira B.*, 290 Neb. 619 (2015).

Generally, law enforcement must have probable cause to conduct a warrantless search without consent. See *State v. Borst*, 281 Neb. 217 (2011). However, *New Jersey v. T.L.O.*, 469 U.S. 325 (1985), provides a relaxed standard for school searches because of the need for teachers to maintain order. The Court in *T.L.O.* found that a school need not get a warrant to search a student and that school officials need not have probable cause for searches, but follows a reasonableness standard. School officials need to have "reasonable suspicion" to conduct a search, a lower standard than probable cause.

The Court of Appeals analyzes Dana's case using the test from *T.L.O.*

First, a search in a school is "justified at its inception" when "there are reasonable grounds for suspecting that the search will turn up evidence that the student has violated or is violating either the law or the rules of the school." *T.L.O.*, 469 U.S. at 341-342. Here, the clunk sound provided Seim reasonable suspicion that Dana's backpack had something in it that violates the law. Therefore, the Court of Appeals finds that this search was justified at its inception.

Second, a search is permissible in its scope "when the measures adopted are reasonably related to the objectives of the search and not excessively intrusive in light of the age and sex of the student and the nature of the infraction." *T.L.O.*, 469 U.S. at 341-342. The Court of Appeals finds that the purpose of Seim's search was to investigate the cause of the sound, which would necessitate opening of the backpack. Upon opening the backpack, she found cologne bottles, prohibited by school policy, and upon removing those, the knife was in plain sight. Therefore, the search was not excessively intrusive.

Therefore, the Court of Appeals affirms the decision of the Juvenile Court.
